admiralty actions arising out of the accident, which had already been commenced in the High Court in Singapore by other cargo interests. In the instant case, however, the other action which has been commenced in the High Court in Singapore has been commenced by the plaintiffs against the servants or agents of the defendants in circumstances in which, on the bare facts which have been made available to this court, it is not possible to be convinced that the action against the servants or agents need have been taken at all. While the existence of more than one action in different jurisdictions will cause difficulties and can be a relevant factor in deciding whether or not to grant a stay, the plaintiffs should be precluded in the present case from using this circumstance to their advantage when it has been brought about by them. It requires little more effort to commence the second action, and to take this circumstance into account in their favour would be to allow the plaintiffs to choose another preferred forum to that previously agreed to by them in entering into the contract of carriage.

Whether to grant a stay or not is a matter for the discretion of the court. I have considered the factors which have been used by the plaintiffs in their attempt to rebut the prima facie case for a stay, and the very lengthy and detailed arguments which have been urged upon me by counsel for the plaintiffs over several days. In my judgment, this was a dispute which the parties had expressly agreed under the bill of lading should be decided by the Tokyo District Court, and decided in accordance with Japanese law. The choice of Japanese law tied to the choice of a Japanese court as the selected forum are strong factors in upholding the jurisdiction clause. The parties are therefore bound by the jurisdiction clause in the bill of lading to which they have agreed unless exceptional circumstances amounting to strong cause to the contrary can be shown. The inconvenience and expense to the plaintiffs in having to transport witnesses to Japan, and having to use the Japanese language instead of English, is not a sufficiently telling factor, especially when matched against the inconvenience and expense to which the defendants in turn would be subject if the action were allowed to be continued in Singapore. While the vessel is shown by the plaintiffs to have been owned some two or three years before the accident by a Panamanian entity, with its principal place of business in Panama City, the carriers and the shippers were Japanese; on the other hand, the plaintiffs have not proved that they themselves have any real connection with Singapore, and even all five of their affidavits were filed by their solicitors. Neither has it been seriously suggested, as in *The 'Maldive Importer'*,[20] that the defendants do not genuinely desire trial in Japan or are only seeking procedural advantages. The existence of another action which has been commenced by the plaintiffs in the High Court in Singapore is in my judgment not of sufficient relevance to affect the prima facie case for a stay. In all the circumstances, I have therefore come to the conclusion that the plaintiffs have not discharged the burden of proof which was placed on them, and have not proved the exceptional circumstances amounting to the strong cause which they must prove if the court is to refuse a stay. Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Niru & Co*; *Ang & Partners*.

Reported by *Terence Tan Bian Chye*

Borneo Motors (S) Pte Ltd v William Jacks & Co (S) Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1651 OF 1983
THEAN J
14 MAY 1990

Landlord and Tenant — Payment for utilities — Tenant to pay electricity and water bill — Whether landlord's computation was correct — Tenant seeking to recover amounts overpaid in respect of such bill — Onus of proving that landlord's computation incorrect

Equity — Estoppel — Payment of bills over a long period of time — Whether payer estopped from claiming that bills were incorrect

The plaintiffs were the tenants and the defendants were the landlords of the premises comprising the front portion of the ground of the building complex ('the premises'). These were let by the defendants to the plaintiffs for a term of three years under a lease.

At all material times the Public Utilities Board ('PUB') did not install separate meters for each of the defendants' tenants; two substation meters were installed by PUB to measure consumption of electricity for the whole of the complex, including the premises. There was no separate meter for measuring electricity consumed in the premises and, accordingly, it was agreed that the plaintiffs should install a meter for measuring their own consumption of electricity.

The basis of the plaintiffs' claims is that overpayments were made for utilities under mistakes of fact; they were mistaken as follows: that the bills rendered by the defendants were proper bills, whereas, in fact, they were not, and that they were under a misconception that the units recorded in the meter had to be multiplied five times for the purpose of equating the rates for such units to the rates charged by PUB.

The claim was disputed by the defendants who amongst other things raised the defence of estoppel, ie that the plaintiffs were estopped from alleging that the method or manner of computation of the electricity charges was incorrect.

Held, dismissing the plaintiffs' claim:

(1) The multiplication by a factor of five was to cover two items, which were not otherwise charged to the plaintiffs: water

used by the plaintiffs, and electricity supplied to or servicing the showroom which did not go through the meter. It seemed to the court that in all probability the reason for imposing a multiplier of five in the bills was a rough method adopted by the defendants to cover the costs of utilities and other services provided to the tenants and not otherwise specifically charged to the tenants.

(2) In this case, it was not established before the court that the units in the bills were multiplied five times because both the plaintiffs and the defendants were under the impression that the units recorded in the meter were required to be so multiplied in order to arrive at the rates of charges applied or charged by PUB. The plaintiffs have not proved what the agreement was with reference to the calculation or computation of the electricity charges in respect of the units recorded in the meter. On the evidence the court was not satisfied that the plaintiffs had discharged the burden of proving that payments of the bills were made under mistakes of fact.

(3) There was no factual basis for the defendants to found the defence of estoppel. The bills were made out by them; the computation therein was made by them; the bills were presented by them to the plaintiffs and they were paid by the plaintiffs. There were no acts or conduct on the part of the plaintiffs on the basis of which the defendants had relied and suffered any detriment. On the evidence before the court, estoppel clearly is not available to the defendants.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 1 of 1990.]

Cases referred to

1 *Anglo-Scottish Beet Sugar Corp Ltd* v *Spalding Urban District Council* [1937] 3 All ER 335 (distd)
2 *Avon County Council* v *Howlett* [1983] 1 WLR 605; [1983] 1 All ER 1073 (distd)

Andrew Chua for the plaintiffs.
Ng Kai Ming for the defendants.

Cur Adv Vult

Thean J: The facts in this case, which have been agreed upon by the parties, are as follows. At all material times, the plaintiffs were the tenants and the defendants the landlords of the premises comprising the front portion of the ground floor of the building complex known as No 989, Bukit Timah Road. The premises ('the premises') were let by the defendants to the plaintiffs for a term of three years from 1 October 1979 to 13 September 1982 under a lease made between them on 13 September 1979 and were used by the defendants as a showroom for display and sale of their motor vehicles. The terms of the lease relating to the payment for electricity and water consumed in the premises as contained in cll 4(4) and 6(1) are as follows:

> 4(4) In the event that the Public Utilities Board install a meter suitable for measuring the quantity of electricity supplied to the premises and that within seven (7) days of the Public Utilities Board making written demand for the same to pay to the Public Utilities Board for all electricity supplied to the premises as measured by such meter;
>
> 6(1) The tenant shall also pay for electricity and water consumed on the premises as metered.

At all material times the Public Utilities Board ('PUB') did not install, or were not able to install, separate meters for each of the defendants' tenants; two substation meters were installed by PUB to measure the consumption of electricity for the whole of the complex, No 989, Bukit Timah Road, including the premises. For the purpose of measuring electricity consumed in the premises only, the plaintiffs, at their own costs and expenses and with the agreement of the defendants, installed a Seimen D22 3-Phase electricity KWHR meter ('the meter') in the premises.

After the commencement of the lease, each month a representative of the defendants read the meter and thereafter the defendants rendered a bill to the plaintiffs reflecting the charges for electricity consumed in the premises. The amount of such charges was computed as follows: (i) the total number of units recorded in the meter was multiplied five times, thus arriving at a new total; (ii) to the units comprised in such new total specific variable rates of charges on a descending scale were applied producing specific sums which were then aggregated to arrive at a total sum, and (iii) to this total sum was added a 'Govt Tax 10%'. This computation was spelled out clearly in the bill. Each month, after the receipt of the bill, the plaintiffs' manager in charge of the showroom forwarded it to the account department of the plaintiffs for payment, and payment was duly made by the plaintiffs to the defendants.

In early January 1981, the plaintiffs were informed that the building complex, 989, Bukit Timah Road had been sold to a company, Ban Lee Investments (Pte) Ltd, and that all future rents for the premises were to be paid direct to the new owner. However, by the defendants' letter of 19 January 1981, the plaintiffs were informed, among other things, as follows:

> In the matter of security service, water usage and other general services which you are enjoying on the site, please be informed that William Jacks & Co (Singapore) Pte Ltd remains the entity to which you should forward payment in respect of such services.

Hence, the plaintiffs continued to pay to the defendants the utility and service charges. In particular, the defendants continued to bill the plaintiffs for charges for electricity as before, and the plaintiffs continued to pay the same. In January 1982, the defendants increased the service charges, including car parking charges payable by the plaintiffs; these increases were paid without any complaint until July 1982, when the plaintiffs objected to such increases and sought to set off all payments for the increases, which had been made, against future service charges. This was not acceptable to the defendants, who threatened to discontinue the supply of utility and other

services to the plaintiffs. Thenceforth, a dispute arose between them. On 30 August 1982, the plaintiffs despatched a telex to the defendants stating, among other things, the following:

> Reiterate that we have sought legal advice and the facts are:
>
> 1 Borneo Motors have overpaid you sum of S$90,914.58 as at June 1982, being overpayment of PUB charges.
> 2 Borneo Motors have overpaid you sum of S$5,525 being overpayment of service charges.
>
> In these circumstances, we request you to refund us $96,439.58.

Discussions between the plaintiffs and the defendants then ensued, which, however, did not lead to any satisfactory resolution of the dispute. In consequence, on 11 April 1983, the plaintiffs commenced this action against the defendants. Initially, the plaintiffs claimed a total sum of $110,709.87 representing the overpayments for electricity, car parking and service charges. Subsequently, they amended their statement of claim and claimed only a sum of $101,069.87, represent ing the total amount of overpayments of electricity charges.

The basis of the plaintiffs' claim is that the overpayments were made under mistakes of fact; they were mistaken as follows:

(i) that the bills rendered by the defendants were proper bills, whereas, in fact, they were not, and
(ii) that they were under a misconception that the units recorded in the meter had to be multiplied five times for the purpose of equating the rates for such units to the rates charged by PUB.

The claim was disputed by the defendants; they denied that there was any mistake in the way they charged the plaintiffs for electricity consumed in the premises. They said that the charges were based on an arrangement reached between the plaintiffs and the defendants, namely, that the plaintiffs should pay electricity charges computed on the basis as set out in the bills. In the alternative, the defendants raised the defence of estoppel, ie that the plaintiffs were estopped from alleging that the method or manner of computation of the electricity charges was incorrect. The case was fought out over several days, and at the conclusion of the hearing, I found that the plaintiffs had failed to establish their claim, and, accordingly, I dismissed it with costs.

There were two issues before me: first, whether there was any mistake on the part of the plaintiffs in making payments of the bills for electricity consumed as charged by the defendants, and, secondly, whether the plaintiffs were estopped, having regard to payments made by them over a period of more than two and a half years, from denying that the method of calculation or computation of the electricity charges was incorrect. The first issue is one of fact, and the burden is on the plaintiffs to prove that they made the overpayments under mistakes of fact.

The evidence adduced by the plaintiffs is as follows. Their first witness is one John Ewing, who is the property director of Inchcape Bhd, which is the parent company of the plaintiffs. He testified that he negotiated the terms of the lease with the defendants and that all the terms that were agreed were contained in the lease. He said that there was no separate meter for measuring electricity consumed in the premises and, accordingly, it was agreed that the plaintiffs should install a meter for measuring their own consumption of electricity. The premises were renovated and the meter was installed. Thereafter, he handed over the day to day management of the premises to the plaintiffs. From then onwards until July 1982 there was no complaint of any sort regarding the meter. He said that in July 1982, the general manager of the plaintiffs informed him that there had been some increases in service charges, and he found that the service charges for the car parking lots allocated to the plaintiffs and general services had been increased. As a consequence of that, he caused to be examined all the bills for electricity charges received from the defendants, and it was then found that units as set out in the bills had a multiplier of five. He discovered 'a mistake' in the electricity charges made by the defendants, and said that the plaintiffs had been overcharged. However, he did not give any evidence on 'the mistake' or how 'the mistake' arose. He gave no evidence as to how the units as recorded in the meter were to be charged, what rates to be applied and how the charges were to be computed. As can be seen from the bills, apart from the multiplication of the units five times, variable rates of charges were applied to the units on a descending scale. Nothing was said by him whether such rates were agreed upon. Nor was there any evidence from him that at the material time he or anyone representing the plaintiffs was told or was in some way under the misconception that it was necessary to multiply the units recorded in the meter five times in order to equate the rates of charges to those charged by PUB. In other words, he did not give any evidence as to the agreement reached between the plaintiffs and the defendants on the manner of charging the units as recorded in the meter, the rates applicable and the computation of the charges. These were not provided for in the lease and obviously were subject matters of a separate agreement.

The branch manager in charge of the showroom at Bukit Timah Road for the period from August 1981 onwards was David Tay Kheng Lock. He gave evidence for the plaintiffs. His duties then were to ensure that the salesmen of the branch perform their duties, to control the expenses and to look after the office generally. During his period of service there, he received each month from the defendants bills for electricity consumed in the showroom. He did see the bills and endorsed them and then passed them to the account department for payment. He did not study the bills but he 'did authenticate the con-

sumption of electricity' as he thought that there was an agreement that the defendants would bill them for electricity consumed. By that, I take it that he approved the bills for payment. He said that the amount billed was between $3,000 and $4,000 per month, and assumed that the charges were correct. However, he did not see the multiplication by five; he looked at the amount charged. I find this astonishing, and I do not accept it. If he had seen the bills and noticed the amount charged, he must have noticed, first, the multiplication by five and, secondly, the variable rates for charging the units; he must have noticed also that a hefty sum was charged for electricity consumed. It might well be, and in all probability it was the case, that as he became the branch manager there only in August 1981, he had, at the time when he assumed office, checked with his predecessor and was told that that was the way in which the defendants billed for the electricity charges, and he accepted that that was correct or was agreed upon. In other words, he just followed what had been done or approved in the past. His evidence therefore did not really assist the case of the plaintiffs.

David Tay became the branch manager only from August 1981; before that he did go over to the branch to cover the duties of other officers. The person who was the branch manager of the showroom as from the start of the branch was not called. He might be able to shed some light on the bills and in particular why no query or complaint was raised on the multiplication of the units five times. It is clearly the duty of the branch manager to control and look after expenses of the branch office, and any branch manager who was in charge at the initial stage and who received the first bill or the bills for the first few months would have noticed: (i) a hefty amount monthly was charged for electricity; (ii) the multiplication of the total number of units five times, and (iii) the charging of various units by variable rates on a descending scale. On noticing these, he would naturally have verified them with his superior officer or the officer in charge and found out what was agreed in relation to the charges for the supply of electricity to the showroom; he would not have approved such bills for payment without any query or complaint, if he found that they were wrong or were not agreed upon. On the evidence, there was no query or complaint from anyone on behalf of the plaintiffs on any aspect of the bills as presented for payment by the defendants over a period of more than two and a half years. Throughout this period, the bills were promptly paid.

Next, there was the evidence of Shirley Leong Lai Chun, the administration and finance manager of the plaintiffs. She was in charge of the plaintiffs' finance department. At all material times, the bills of the defendants were transmitted by the branch to her for payment, and before payment of each bill a member of her staff prepared a voucher and a cheque for her to sign. She signed the cheques and paid the bills. She said that she only looked at the payment vouchers and checked the amounts therein against the bills; she did not study the bills, and until July 1982 she did not notice the multiplication by a factor of five. There was a mistake or oversight on her part. That I cannot accept. As administration and finance manager, she obviously did not sign the cheques as a matter of course without looking at the bills or at least initially when such bills came before her; she must have noticed the amounts charged in the bills, the purpose therefor, the multiplier of five and the application of variable rates to the units. All these were stated very clearly on the bills. There was no question of any mistake or oversight on her part. In all probability, she paid the bills because they had been approved by the branch manager. She did not participate in the negotiation for the terms of the lease and could not give any evidence as to the installation of the meter and the basis on which the units as recorded in the meter were to be charged and computed. Her evidence again was of no assistance.

The plaintiffs then adduced evidence of certain statements said to have been made by one Miss Lim Ai Lin ('Miss Lim') who, at the material time, was the senior legal officer of a company, Straits Steamship Ltd, then an associate company of the defendants. First, there was a discussion which was said to have taken place between Chew Mei Kwang, who is a partner of the legal firm representing the plaintiffs in his action, and Miss Lim. Chew was called and he gave evidence. He said that he was consulted by the plaintiffs in connection with this claim; he dealt with the plaintiffs' legal officer, Han Ngiap Juan, and after a discussion with the latter he decided to call on Miss Lim with a view to resolving the matter in dispute. According to him, he met Miss Lim, and the latter was fully aware of the basis on which the defendants billed the plaintiffs, and she said that the meter was used to measure the electricity consumed by the defendants and that to obtain the true rate the reading of the meter had to be multiplied five times. To that Chew responded that that basis might not be correct, and it was agreed between them that an independent consultant be engaged.

The then legal officer of the plaintiffs, Han Ngiap Juan, was also called, and he gave evidence of two conversations he had with Miss Lim who gave him the same reason for the multiplication of the reading of the meter. Unfortunately, Miss Lim was not called as a witness. Hence, the evidence of Chew and Han of what Miss Lim said to them is only evidence of what each of them heard from Miss Lim and was not evidence of the truth of what she said. Accordingly, the plaintiffs have not proved the truth of what Miss Lim said. Furthermore, Miss Lim was not the officer involved in any way in the affairs of the defendants and was certainly not the officer who negotiated or participated in any way in the negotiation with the plaintiffs in 1979 for the lease of the premises. It follows

that what Miss Lim said to Chew and Han was hearsay upon hearsay.

Han appeared to have participated in the negotiation for the terms of the lease. His participation, however, was confined to the legal aspect of the transaction. He did not give any evidence as to what truly was the understanding or arrangement reached between the plaintiffs and the defendants relating to the installation of the meter, the basis for charging the units as recorded in the meter and the computation of such charges. His evidence again was not helpful.

The plaintiffs called Hsu Tar Su, who is a lecturer in the Department of Physics, National University of Singapore. Han had consulted him on the meter, and he had examined and conducted a test on the meter. His finding was that the units as recorded there reflect the kwhr rate of electricity consumed: the reading there is the same as that in PUB meters and needs no multiplication. He prepared a report which was produced and admitted (P3). Hsu's evidence was unchallenged, and I accept it entirely. But his evidence alone did not assist the plaintiffs.

Evidence from several other witnesses was adduced, but their evidence was irrelevant and of no assistance to the determination of the issues before me.

I now turn to the evidence adduced by the defendants. Only one witness was called, namely, George Ng Seng Keong. He joined the defendants only in April 1980 or thereabout and was then the group financial controller; he left the defendants in 1985 and at that time he was the group finance director. In the capacity of the group financial controller, he was in charge of all expenses and revenues and supervision of bills to customers of the defendants including the tenants of the complex, 989, Bukit Timah Road. His office was in that complex. He testified that he was aware of the basis for computing the electricity charges billed to the plaintiffs, which, he said, was founded on an arrangement made between the plaintiffs and the defendants. The multiplication by a factor of five was to cover two items, which were not otherwise charged to the plaintiffs: (i) water used by the plaintiffs, and (ii) electricity supplied to or servicing the showroom which did not go through the meter. On (i), the plaintiffs for the purpose of their showroom used a fair amount of water for washing and cleaning cars, and the water used both inside and outside the premises was not measured by any meter. On (ii), there were several floodlights outside the showroom which were not covered by the meter; they were at least five or six of them, and some of them were large ones, and they were switched on most of the time at night for the purpose of the showroom. Also the electricity serving the automatic door in or to the showroom was not covered by the meter. George Ng was not the person who negotiated the terms of the lease with the plaintiffs and in particular the arrangement relating to the computation of electricity charges in the bills. He said he made enquiry and was informed of the arrangement by his superior officers, Ken Chapman and James Lee, both of whom were not available and were not called by the defendants. Hence, George Ng's evidence on the arrangement is also hearsay, but it explained the reason for the continuation of the electricity charges being computed in the manner as set out in the bills, as he was then in charge of supervising such billing. It appears that the defendants also multiplied five times the units recorded in meters installed by their other tenants in those premises let to them. In other words, the other tenants of the complex were similarly charged in respect of electricity consumed in their respective premises and recorded in their respective meters. It seems to me that in all probability the reason for imposing a multiplier of five in the bills was a rough method adopted by the defendants to cover the costs of utilities and other services provided to the tenants and not otherwise specifically charged to the tenants.

The defendants also had not adduced any direct evidence on the arrangement said to have been made between them and the plaintiffs on the computation of the electricity charges paid by the plaintiffs. However, the bills produced, the payments made and the fact that the plaintiffs had paid them for a period of over two and a half years without complaint or query are consistent with the presence of the arrangement as suggested by the defendants.

Clause 6(1) of the lease was referred to in the submission of counsel for the plaintiffs. However, it is not clear exactly what cl 6(1) of the lease was intended to cover, and in particular whether the words 'as metered' refer to the reading recorded in the meter. Assuming that the words do refer to the meter, that clause alone does not really assist the plaintiffs. There are still the questions as to what rates of charges should be applied to them, and how they are to be computed. There is no evidence that the same PUB rates were agreed to be applied to the units as recorded in the meter. Further, that meter, of course, does not measure water consumption in the premises.

Counsel for the plaintiffs relied on *Anglo-Scottish Beet Sugar Corp Ltd* v *Spalding Urban District Council*[1] and submitted that the facts there were almost on all fours with those in the instant case. I disagree. In that case, the defendant council supplied water to the plaintiff under a written agreement which provided, inter alia, payment by the plaintiff of a minimum quarterly charge of £375. By a subsequent agreement the minimum quarterly charge was reduced to £100. For three quarters in every year, the amount of water taken by the plaintiff never exceeded the minimum charge of £100 in value, but the manager of the plaintiff in ignorance of the subsequent agreement paid the minimum rate of £375 as provided in the first agreement. In an action to recover the overpayments made

under a mistake of fact, the court upheld the claim. It was not in dispute that there was a mistake and the only question was whether it was a mistake of fact or of law. Atkinson J held that it was a mistake of fact and the plaintiff was entitled to recover the overpayments.

In this case, it was not established before me that the units in the bills were multiplied five times because both the plaintiffs and the defendants were under the impression that the units recorded in the meter were required to be so multiplied in order to arrive at the rates of charges applied or charged by PUB. The plaintiffs have not proved what the agreement was with reference to the calculation or computation of the electricity charges in respect of the units recorded in the meter. On the evidence before me, I am not satisfied that the plaintiffs had discharged the burden of proving that payments of the bills were made under mistakes of fact.

What I have decided is sufficient to dispose of the case, and strictly it is unnecessary to deal with the second issue, ie the defence of estoppel raised by the defendants. However, as both counsel had addressed me on that issue, I think I should consider it; it can be disposed of very briefly. It is not clear to me on what basis the defendants founded the defence of estoppel; there was really no factual basis for it. The bills were made out by them; the computation therein was made by them; the bills were presented by them to the plaintiffs and they were paid by the plaintiffs. There were no acts or conduct on the part of the plaintiffs on the basis of which the defendants had relied and suffered any detriment. On the evidence before me estoppel clearly is not available to the defendants.

Counsel for the defendants relied on *Avon County Council* v *Howlett*.[2] That case is entirely different. There, the defendant was a teacher in the plaintiffs school and was injured in an accident in January 1974. Under his conditions of service he was entitled to full pay for the first six months, half pay for the next six months and nothing thereafter. However, the plaintiff paid him the full rate for the months from January to September 1974 and half rate of pay until August next year. The defendant made enquiries with the plaintiff and was told that the payments were correct. In reliance on this information he incurred certain expenses. Later, the plaintiff on discovering the mistake sought to claim from the defendant the amounts overpaid. The claim was resisted and the defendant raised the plea of estoppel by representation. It was held that since the defendant had been led by the plaintiffs representations to believe that he was entitled to treat the entirety of the overpayments as his own and had acted on those representations, the doctrine of estoppel by representation was a defence to the plaintiffs claim for the overpayments. In this case, there was no representation at all in any form held out by the plaintiffs; nor had the defendants showed that they had suffered any detriment. This defence raised by the defendants has no merit whatsoever. I rejected it.

Claim dismissed.

Solicitors: *Tan Kim Seng & Partners*; *PK Wong & Advani.*

Reported by *Terence Tan Bian Chye*

See Wan Chon v Chua Ka Bu

HIGH COURT (SINGAPORE) — SUIT NO 582 OF 1989
CHAN SEK KEONG J
11 MAY 1990

Civil Procedure — Mental disability of party — Plaintiff in coma at time action started — Whether defendant could apply for dismissal of action — Rules of the Supreme Court 1970, O 76 r 2 — Mental Disorders and Treatment Act (Cap 178, 1985 Ed), ss 2 & 3

Mental Disorders and Treatment — Jurisdiction — Whether assistant registrar had jurisdiction to order inquiry into mental health

This is an appeal against the order of the assistant registrar, made on the hearing for further directions, that the action be stayed. The plaintiff had suffered severe injuries, including a head injury, from a collision between his motor cycle and the pick-up van driven by the defendant. The defendant applied for a dismissal of the action on the basis of the medical report, on the ground of non-compliance with O 76 r 2 of the Rules of the Supreme Court 1970. This was because the plaintiff was in a coma or otherwise disabled on the date of the commencement of this action. The assistant registrar ordered a stay of proceedings pending the determination of the plaintiff's capacity in accordance with the procedure laid down in the Mental Disorders and Treatment Act (Cap 178, 1985 Ed) ('the Act'). On appeal, it was argued that the assistant registrar had no jurisdiction to order an inquiry under the Act and the question was whether the order amounted to the exercise of such jurisdiction.

As the appeal was by way of a rehearing, the learned judge decided to also deal with the application to dismiss the action. On this issue, the court had to consider the scope of the Act.

Held, allowing the plaintiff's appeal:

(1) By ordering a stay of proceedings pending an inquiry, the assistant registrar has, in substance, ordered an inquiry under the Act, albeit indirectly. The court did not think the assistant registrar can do indirectly what he cannot do directly. That would be sufficient to dispose of the appeal.

(2) A person who loses the use of his mental faculty as a result of an 'accident' (ie any unforeseen event) is a person of unsound mind for the purpose of the common law. There is no reason to believe that the legislature, in using the expression 'unsound mind' in the Act and not defining it, intends to give it a less comprehensive meaning as suggested by counsel, ie that it is only an alternative description of a lunatic. Accordingly, the court was of the view that if the plaintiff's mental condition is so